

REVIEW OF APPLICATION NO. A/YL-ST/648
UNDER SECTION 17 OF THE TOWN PLANNING ORDINANCE

Proposed House
in “Village Type Development” Zone,
Lot 210 S.C in D.D. 96, Chau Tau Tsuen, San Tin, Yuen Long

1. Background

1.1 On 9.5.2023, the applicant, Mr. WONG Yu Hong represented by Conrad Tang & Associates Limited, sought planning permission for a proposed house at the application site (the Site) under section (s.) 16 of the pre-amended Town Planning Ordinance (the pre-amended Ordinance)¹. The Site fell within an area zoned “Village Type Development” (“V”) on the approved San Tin Outline Zoning Plan (OZP) No. S/YL-ST/8 at the time of the application (**Plan R-1a**). The approved San Tin Technopole (STT) OZP No. S/STT/2 gazetted on 20.9.2024 is currently in force and the “V” zone of the Site remains unchanged (**Plan R-1b**).

1.2 On 13.10.2023, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board (the Board) decided to reject the application and the reason was:

the proposed development was not in line with the planning intention of the “V” zone, which was primarily to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within “V” zone was primarily intended for development of Small Houses by indigenous villagers. No strong planning justification had been given in the submission for a departure from the planning intention.

1.3 For Members’ reference, the following documents are attached:

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| (a) RNTPC Paper No. A/YL-ST/648 | (Annex A) |
| (b) Extract of minutes of the RNTPC Meeting held on 13.10.2023 | (Annex B) |
| (c) Secretary of the Board’s letter dated 27.10.2023 | (Annex C) |

2. Application for Review

2.1 On 15.11.2023, the applicant applied under s.17(1) of the pre-amended Ordinance for a review of the RNTPC’s decision to reject the application (**Annex D1**). On 12.1.2024, the applicant submitted a written representation in support of the

¹ The “pre-amended Ordinance” refers to the Town Planning Ordinance as in force immediately before 1.9.2023. Pursuant to s.29(17) of the Town Planning Ordinance currently in force, the pre-amended Ordinance applies to applications made before 1.9.2023.

review application (**Annex D2**).

- 2.2 On 12.4.2024, the Board agreed to defer a decision on the review application as requested by the Planning Department (PlanD) until after the Chief Executive in Council (CE in C) has made a decision on the draft STT OZP No. S/STT/1 and the relevant adverse representation(s). During the first two months of the exhibition period, adverse representations related to the entire draft STT OZP were received. After giving consideration to the representations, the Board on 19.7.2024 decided not to uphold the representations and that no amendment should be made to the draft STT OZP to meet the representations. On 17.9.2024, the CE in C, under s.9(1)(a) of the Town Planning Ordinance, approved the draft STT OZP, which was subsequently renumbered as S/STT/2 and the approved STT OZP No. S/STT/2 was exhibited on 20.9.2024 for public inspection.
- 2.3 Comparing with the s.16 application, there is no change to the development proposal in the review application. To recapitulate, the area of the Site is about 82m². As shown on the layout plans at Drawings A-1 and A-2 of **Annex A**, the proposed development comprises one two-storey detached house (6m in height) with a total gross floor area (GFA) of about 60m², a plot ratio of about 0.73 and a site coverage of about 36.59%. One private car parking space will be provided at the Site.

3. Justifications from the Applicant

The justifications put forth by the applicant in support of the review application are detailed in his written representation at **Annex D2** as summarised below:

- (a) there is no Small House application approved or under processing at the Site. It is roughly estimated that the undeveloped land within the subject “V” zone should be more than able to meet the outstanding demand for Small House development. While the planning intention of the “V” zone is primarily for the development of Small Houses by indigenous villagers, house development by non-indigenous villages in the existing areas might also be considered where there is ample surplus of land within the “V” zone;
- (b) the proposed two-storey house complies with the development parameters of a New Territories Exempted House (NTEH) (i.e. not exceeding 8.23m in height) and is virtually a village house redevelopment. The proposed house is generally not entirely in conflict with the planning intention of “V” zone. The proposed house at the Site could cater for the housing need of local residents and is in line with the Government’s policy to increase housing supply;
- (c) there are similar non-NTEH house applications (No. A/I-PC/14 and A/YL-ST/633) within “V” zones approved by RNTPC in 2022. For the case in Peng Chau (application No. A/I-PC/14), it also comprises Old Schedule Agricultural Lots demised for agricultural use under the Block Government Lease with the restriction that no structures are allowed to be erected without the prior approval of the Government;

- (d) the Site was used for residential purpose before the gazetting of the relevant Interim Development Permission Area Plan (IDPAP). As the GFA of the proposed house redevelopment does not exceed that of the existing house at the Site, it may be considered under exceptional circumstances;
- (e) the existing house was not properly surveyed/recorded in the Squatter Control Survey in the early 1980s. The application is merely to redevelop a house within the lot boundary in order to rectify the issue of encroachment upon government land (GL)²; and
- (f) the proposed house is compatible with adjoining land uses, and no traffic, environmental, drainage, visual and landscape impacts are envisaged.

4. The Section 16 Application

The Site and Its Surrounding Areas (Plans R-1a to R-4)

- 4.1 The situation of the Site and its surrounding areas at the time of consideration of the s.16 application by RNTPC were set out in paragraph 7 of **Annex A**. There has been no material change of the situation of the Site and the surrounding areas since then.
- 4.2 The Site is:
 - (a) accessible from Castle Peak Road – Chau Tau via Chau Tau West Road and Chau Tau South Road; and
 - (b) currently fenced off, hard paved with some vegetation and partly occupied by a single-storey vacant house.
- 4.3 The surrounding areas are predominantly occupied by village settlements and residential structures of Chau Tau and Poon Uk Tsuen, intermixing with vacant lands and a vehicle park.

Planning Intention

- 4.4 There is no change of planning intention of the “V” zone from the previously approved San Tin OZP No. S/YL-ST/8, as mentioned in paragraph 8 of **Annex A**, to the approved STT OZP No. S/STT/2 currently in force. The planning intention of the “V” zone is to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within this zone is primarily intended for development of Small Houses by indigenous villagers. It is also intended to concentrate village type development within this zone for a more orderly development pattern, efficient use of land and provision of infrastructures and services. Selected commercial and community uses serving the needs of the villagers and in support of the village development are always

² As shown on **Plan R-2b**, the existing single-storey house straddles on Lot 210 S.C in D.D. 96 (i.e. the Site) and the adjoining GL. The proposed house development under the current application is confined within the boundary of the Site without involving the adjoining GL.

permitted on the ground floor of a NTEH. Other commercial, community and recreational uses may be permitted on application to the Board.

Previous Application

4.5 The Site is not involved in any previous planning application.

Similar Application

4.6 During the past five years, there is no similar application within the same “V” zone of the OZP.

5. Comments from Relevant Government Departments

5.1 Comments on the s.16 application made by relevant government departments are stated in paragraph 9 and Appendix II of **Annex A**. Their advisory comments, if any, are at Appendix III of **Annex A** and recapitulated at **Annex E**.

5.2 For the review application, relevant government departments have been further consulted and they all maintain their previous views of having no objection to or no adverse comment on the s.16 application and have no further comments on the review application, except that the District Lands Officer/Yuen Long of Lands Department (DLO/YL of LandsD) has updated his comments in view of the review application.

Land Administration

5.2.1 Comments of DLO/YL of LandsD:

- (a) the Site comprises Old Schedule Agricultural Lot held under the Block Government Lease (BGL) which contains the restriction that no structures are allowed to be erected without prior approval of the Government;
- (b) the Site is within the village ‘environ’ (‘VE’) of Chau Tau (**Plan R-1b**) and no Small House application has been approved or is being processed at the Site. The number of outstanding Small House application is 57 and the estimated 10-year Small House demand is 485 for Chau Tau and Poon Uk Tsuen;
- (c) the existing house straddling on Lot 210 S.C in D.D. 96 (the Lot) (i.e. the Site) and adjoining GL is regarded as an unauthorised structure which constitutes a breach of the BGL. As there are unauthorised building works and uses on the Lot which are already subject to lease enforcement actions according to case priority, the lot owner should rectify the lease breaches as demanded by LandsD;

- (d) the application involves demolition of the existing house and rebuilding into a two-storey detached house within the lot boundary. Notwithstanding paragraph (c) above, should the Board approve the application, the applicant has to apply for a land exchange to implement the planning scheme. However, there is no guarantee at this stage that the land exchange application will be approved. Such application, if submitted, will be dealt with by LandsD acting in the capacity of the landlord at its sole discretion, and if it is approved, the approval will be subject to such terms and conditions including amongst others, the payment of premium and administrative fee as may be imposed by LandsD;
- (e) according to the detailed justifications submitted by the applicant, the proposed development is not a NTEH. The applicant should be reminded that any proposed building works should obtain the approval of the Building Authority (BA) under the Buildings Ordinance (BO) (Cap. 123);
- (f) the proposed vehicular access to the Site would pass through the adjoining private lot, namely, Lot 211 RP in D.D. 96 (**Plan R-2b**). The Government does not guarantee any right-of-way to the Site, and the applicant shall at his own expense make his own arrangements for acquiring such right-of-way;
- (g) in responding to paragraph 7 of the Applicant's written representation, the 1982 Squatter Control Survey was conducted by the Housing Department before the whole squatter control responsibility being transferred to LandsD in 2006. That said, it is not under LandsD's purview to survey/record any existing development at that time in 1980s. DLO/YL of LandsD is not in a position to comment whether the existing "old village house" was not properly surveyed at that time; and
- (h) as per LandsD's record, the existing "old village house" is not a Surveyed Squatter Structure. Erection of any structure(s) without LandsD's approval is a breach of lease conditions at the subject Lot. The lot owner has the duty of care to recognise what and where she can/cannot develop, instead of erecting unauthorized structure(s) and illegally occupying the GL but alleging the Government for not timely informing her the situation.

5.3 Comments from the following department is also recapitulated below.

Building Matters

5.3.1 Comments of the Chief Building Surveyor/New Territories West of Buildings Department (CBS/NTW of BD):

there is no record of approval granted by the BA for the existing structures at the Site. If the existing structures (not being a NTEH) are erected on leased land without approval of BA, they are unauthorised building works (UBW) under the BO and should not be designated for the proposed use under the application. For UBW erected on leased land, enforcement action may be taken by BD to effect their removal in accordance with the prevailing enforcement policy against UBW as and when necessary. The granting of any planning approval should not be construed as an acceptance of any existing building works or UBW on the Site under BO.

6. Public Comments Received During Statutory Publication Periods

- 6.1 On 24.11.2023 and 26.1.2024, the review application and the written representation submitted by the applicant were published for public inspection. During the two statutory public inspection periods, a total of eight public comments were received from residents and indigenous villagers of Chau Tau and Poon Uk Tsuen, including the trustee and administrator of Man Ting Sze Tso, a member of Man Ting Sze Tso, land owners of adjacent lands and one comment enclosing with 12 signatures, all raising objections to the application mainly on the grounds that the proposed development is not in line with the planning intention of “V” zone; approval of the application would set a dangerous precedent; the Site with the existing structure being built on GL is illegally used for residential purpose and rebuilt without planning permission; no consent has been sought from the land owner of the adjacent lot (i.e. Lot 211RP in D.D. 96), which is owned by Man Ting Sze Tso for granting access to the Site; and the proposed development would ruin the Fung Shui of the area (**Annex F**).
- 6.2 At the s.16 application stage, one public comment was received from a resident of Chau Tau raising objection to the application. The summary of the comment is in paragraph 10 of **Annex A**.

7. Planning Considerations and Assessments

- 7.1 The application is for a review of the RNTPC’s decision on 13.10.2023 to reject the s.16 application for proposed two-storey detached house (6m in height) at the Site, which is zoned “V” on the OZP with the reason stated in paragraph 1.2 above. To support the review application, the applicant has submitted a written representation as set out in paragraph 3 above. Since the consideration of the s.16 application by RNTPC, there has been no material change in planning circumstances of the Site and the subject “V” zone. The planning considerations and assessments as set out in paragraph 11 of **Annex A** remain valid. The planning considerations/assessments on and responses to the applicant’s justifications submitted for the review application as set out in paragraph 3 above are provided below.
- 7.2 The applicant claims that the proposed house is generally not entirely in conflict with the planning intention of “V” zone and there is sufficient supply of land within the “V” zone to meet the outstanding demand for Small House development. The planning intention of the “V” zone is to designate both

existing recognised villages and areas of land considered suitable for village expansion and land within this zone is primarily intended for the development of Small Houses by indigenous villagers. According to the Notes of the OZP of the “V” zone, ‘House (NTEH) only’ is a Column 1 use which is always permitted whilst ‘House (not elsewhere specified)’ is a Column 2 use which requires planning permission from the Board. The current application is for proposed house development, not a Small House or NTEH. Irrespective of whether there is any Small House application being processed/approved at the Site or sufficient supply of land within the “V” zone to meet the outstanding demand for Small House development, the proposed house development is not in line with the planning intention of the “V” zone. Besides, there is no similar planning approval for non-NTEH house development within the same “V” zone. In view of the above, approval of the current application would set an undesirable precedent for similar applications within the “V” zone and the cumulative effect of approving such applications would reduce the land available within the “V” zone for Small House development.

- 7.3 The applicant claims that there are similar applications for non-NTEH house developments (No. A/I-PC/14 and A/YL-ST/633) within “V” zones approved by RNTPC in 2022. For application No. A/I-PC/14, there is no recognised village and ‘VE’ in Peng Chau and the planning intention for the “V” zone on Peng Chau OZP is for the retention of existing village areas. For application No. A/YL-ST/633, sympathetic consideration was given as the concerned lot was once subject to building entitlement³. As for the current application, DLO/YL of LandsD advises that the Site is located within the ‘VE’ of Chau Tau and is under a BGL demised for agricultural use with no building entitlement. The planning circumstances of the current application are therefore different from the two approved applications and the considerations of them are not applicable for the current application.
- 7.4 The applicant also claims that the existing house was used for residential purpose before the gazettal of the IDPAP for San Tin in 1990 and that it was not properly surveyed/recorded in the Squatter Control Survey in the early 1980s. On the consideration of ‘existing use’⁴, it should be noted that the existing house on the Site is vacant as observed during site visits in June 2023 (at the time of s.16 application) and September 2024 (at the time of the current s.17 review application), and the proposed house is a redevelopment with a different footprint

³ The Site (formerly known as Lot 3405 in D.D.102) (Ex-Lot) was granted under New Grant No. 2474 dated 16.3.1977 before the gazettal of the IDPAP for San Tin on 17.8.1990. As the applicant had not pursued the residential development on site as per the lease requirements, it had resulted in re-entry of the site by the Government in 2016. The applicant applied to the High Court for a relief against the re-entry of the Ex-Lot and the Court made a Consent Order on 25.4.2022 which required the applicant to obtain planning permission from the Board for the proposed house use. Sympathetic consideration was given to the application for house development taking into account the Consent Order.

⁴ According to the covering Notes of the OZP, for any land or building falling within the boundaries of the OZP and also previously falling within the boundary of the plan for the San Tin Interim Development Permission Area, no action is required to make the use of such land or building conform to the OZP, if the use of such land or building was in existence immediately before the first publication in the Gazette of the notice of the IDPAP for San Tin covering such land or building, provided such use has continued since it came into existence. Any material change of such use or any other development (except minor alteration and/or modification to the completed development of land or building which is always permitted) must be always permitted in terms of the OZP or in accordance with a permission granted by the Board.

and location as compared with the existing house which constitutes a material change of 'existing use' and is not allowed unless permitted in terms of the OZP or in accordance with a permission granted by the Board. Besides, DLO/YL of LandsD advises that according to LandsD's record, the house currently erected on the Site and adjoining GL is not a Surveyed Squatter Structure and is regarded as an unauthorised structure, which constitutes a breach of the lease and is subject to lease enforcement actions. CBS/NTW of BD also advised that there is no record of approval granted by BA for the existing structures at the Site. If the existing structures, not being a NTEH, are erected on leased land without approval of BA, they would constitute a UBW under BO which may be subject to enforcement action as and when necessary.

- 7.5 The Site is located at the fringe of the existing village settlements of Chau Tau and within 'VE' of Chau Tau, and the surrounding areas are predominantly occupied by village houses of two to three storeys intermixing with a vehicle park and vacant lands. The proposed two-storey house with a building height of 6m will not exceed the height restriction of three storeys (8.23m) for development within the "V" zone and is considered not incompatible with the surrounding uses, which are mainly the village settlements.
- 7.6 All relevant government departments further consulted maintained their previous views of having no objection to or no adverse comment on the review application.
- 7.7 Regarding the public comments objecting to the review application as detailed in paragraph 6 above, the government departments' comments and the planning assessments above are relevant. Besides, Fung Shui issue as mentioned in the public comments is not a planning consideration of the Board.

8. Planning Department's Views

- 8.1 Based on the assessments made in paragraph 7, having taken into account the public comments in paragraph 6 and given that there is no material change in the planning circumstances since the consideration of the subject application by the RNTPC, PlanD maintains its previous view of not supporting the review application for the following reason:

the proposed development is not in line with the planning intention of the "V" zone, which is primarily to designate both existing recognised villages and areas of land considered suitable for village expansion. Land within "V" zone is primarily intended for development of Small Houses by indigenous villagers. No strong planning justification has been given in the submission of the planning application or the review for a departure from the planning intention.

- 8.2 Alternatively, should the Board decide to approve the application, it is suggested that the permission shall be valid until 18.10.2028, and after the said date, the permission shall cease to have effect unless before the said date, the development permitted is commenced or the permission is renewed. The following conditions of approval and advisory clauses are also suggested for Members' reference:

Approval conditions

- (a) the submission of a run-in/run-out proposal for the development to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board;
- (b) in relation to (a) above, the provision of the run-in/run-out for the development to the satisfaction of the Commissioner for Transport and the Director of Highways or of the Town Planning Board; and
- (c) the submission of a drainage proposal to the satisfaction of the Director of Drainage Services or of the Town Planning Board.

Advisory clauses

The recommended advisory clauses are attached at **Annex E**.

9. Decision Sought

- 9.1 The Board is invited to consider the application for a review of the RNTPC's decision and decide whether to accede to the application.
- 9.2 Should the Board decide to reject the review application, Members are invited to advise what reason(s) for rejection should be given to the applicant.
- 9.3 Alternatively, should the Board decide to approve the review application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permission should expire.

10. Attachments

Annex A	RNTPC Paper No. A/YL-ST/648
Annex B	Extract of minutes of the RNTPC Meeting held on 13.10.2023
Annex C	Secretary of the Board's letter dated 27.10.2023
Annex D1	Applicant's letter dated 15.11.2023 applying for review
Annex D2	Applicant's FI received on 12.1.2024
Annex E	Recommended Advisory Clauses
Annex F	Public Comments on the Review Application
Plan R-1a	Location Plan (the then OZP No. S/YL-ST/8)
Plan R-1b	Location Plan (the current OZP No. S/STT/2)
Plans R-2a and 2b	Site Plan
Plan R-3	Aerial Photo
Plan R-4	Site Photos